
P E T I T I O N

For the Earl of Southesk,

Against

Sir John Murray of Drumcairn, and others.

MY Lords of Council and Session, Unto your Lordships shews, *Charles* Earl of *Southesk* : That where the Deceast Countess of *Errol* my Fathers Sister, and my Lord *Drumcairn*, taking Advantage of my Fathers Indisposition and Sicknes, when he was affected with a malignant Fever, whereof he died the next day, prevailed with him to consent to the granting of a Bond for Sixty Thousand Pounds *Scots* to her, without any Shadow of a just Cause, but meerly on Jealousies (which now evidently appear to have been without all Ground) suggested by them to my Father, that I might Endanger the Ruine of his Family and Estate, if, to restrain me from following my Mothers Advice, and from allowing her the Management of my Fortune, I were not ingaged for a vast Sum, in a Bond to be intrusted to her, to be made use of for that Design allanerly, but no part of it ever to be exacted. And Sir *John Murray* of *Drumcairn* being not only Privy to this Project, but the Contriver thereof, a Lawyer and a Lord of the Session. Advised that the Obligation would not stand good in Law, unless I, my Fathers Apperand Heir, were bound in it. Upon this Advice, a Bond was drawn up, without my Knowledge, or the Knowledge of any of my Friends, and (on a *Saturdays* Night, about Mid-night) I was called in to Sign the Bond, being kept out until it was so framed, without any previous Advertisement ; and in the meantime, the Relations of my Family, particularly Sir *David Carnagy* of *Pittaraw*, and Doctor *Charles Carnagy* Dean of *Breicken* his Brother, were kept at the Door, and not suffered to come in, though they desired Access. The whole Matter being a Surprise to me, and my Father being in extream Agony, and so Austere, that it is known, he frequently before, on trivial Matters, did threaten me so, as I durst not Disobey him, on the Peril of my Succession, if he had Survived, I did Sign, being peremptorly so commanded by my Father ; but I not only shew a visible Reluctance, but delivered not the Bond, until the Countess of *Errol* did declare to me, (as she did frequently since to others, of all Ranks, in this Kingdom, and elsewhere,) that she took it only to be a Token of my Fathers Kindness and Trust to her, and assured me that she would never exact one Groat of it ; and being so encouraged by my Ladies Engagement, and considering also, that she was a person of Honour, and that I hoped she would not suppress her Fathers Family, I did not withstand longer, in the Circumstances I stood ; being still kept in my Fathers Presence, and my Friends restrained from Access to him or me.

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The Bond being thus elicited, I was loath to disoblige my Aunt in her own time, and besides I was her Apperand Heir, and Nearest of Kin, and so had the hope of Succession; but understanding, after my Ladies Decease, that my Lord *Drumcairn*, and others, claimed Interest in the said Bond, by several Deeds from her, and that I am wholly excluded; I have raised Reduction and Improbation of the Bond, and Conveyances thereof, in which the Terms are run; but the Defenders delaying the Production of the Conveyances, whereby I cannot come to bring my Process to be Determined this Session. And seeing I have not only already lost my Mean of Probation by the Countess (now Deceased) her Oath, but the Lord *Drumcairn*, who was a Contriver of the Project, and a Witness to the Bond, is now become Creditor, by a Conveyance from the Countess, in the Bond; whereby I will want his Oath as a Witness, and thereby there remains only one Subscribing Witness, and two Persons more, who were then Servants, and present at the Subscribing and Delivering; by whose Testimonies alone it is possible for me to prove the close manner of preparing that Bond, and the bringing me in the Room by a Trap, and Detaining me as Prisoner until I gave full Obedience to the Commands of my dying Father. As also these Witnesses, and Sir *David Carnagie* of *Pittarrow*, are the only Persons (his Brother the Dean of *Breichin* being now dead, as also *James Carnagie* of *Newgate*, who was then with them at the Door) who can prove how my Friends were kept out, and denied Access at the time when the Trap was preparing for me, and when I was brought unto it. And lest my Mean of Probation may perish during the lingering Delays of an Improbation, wherein after the Formalities of Process are over, the Case can never be determined, to the Satisfaction of either Party, but by a Hearing in your own Presence: It is therefore most just that necessary Witnesses be examined, that their Depositions may lie *in retentis*, and that my Probation be not irrecoverably lost, and my Family Endangered to be suppressed, if they should die during the Dependence.

I hope I need not use many words to persuade your Lordships to grant this my Reasonable Desire; If Testimonies had never been taken in any case to lie *in retentis*, I should not have Applied, but seeing your Lordships are frequently in use to allow Probations to be received in that manner, I may boldly say, that no Case ever did more merit your Lordships favour: for though all the Circumstances of eliciting the Bond do not yet appear, yet the best View that the Action can receive is so odious, that I am very hopeful, none that pretend Right to it, will in Honour and Conscience pretend to exact it, though my Probation should Perish: However the Creditors who ought to produce, will for shame, use all Delays: and in Process of Time they may become more hardened, or the Right may fall to onerous Successors.

May it therefore please your Lordships to preserve my Mean of Probation against Humane Frailty, by taking the Depositions of the Witnesses, whose Names are contained in a Condescendence herewith produced, that the same may lie *in retentis* until the Event of the Cause. According to Justice, and your Lordships Answer.